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BEFORE THE ARIZONA CORPORATION COMMISSION
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Commissioner

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AZ CORP COMMISSION
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IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH § 271 OF THE)
TELECOMMUNICATIONS ACT)
OF 1996)
_____)

Docket No. T-00000A-97-0238

Qwest's Response to AT&T's**Motion for Review of Staff's****Resolution of PMA Impasse --****MIL Issue No. 926**

Qwest Corporation ("Qwest") respectfully submits this response to AT&T Communications of the Mountain States, Inc.'s ("AT&T") Motion for Review of Staff's Resolution of PMA Impasse - MIL Issue No. 926 ("Motion for Review"), in which AT&T requests that the Administrative Law Judge ("ALJ") overrule the Staff of Arizona Corporation Commission's ("Staff") resolution of PMA Impasse -- MIL Issue No. 926 ("Impasse Resolution").

I. INTRODUCTION AND SUMMARY

AT&T asks the ALJ to overrule Staff's resolution of an issue relating to the Performance Measurement Evaluation ("PME"), which is one of the five tests to be conducted on Qwest's Operations Support Systems ("OSS"). Staff analyzed the relevant provisions of the MTP and the TSD and determined that, before the Functionality Test begins, the third party test administrator, Cap Gemini Ernst & Young ("CGEY"), must confirm that Qwest is properly collecting the underlying performance measurement data and analyze three months of historical data for those performance measurements for which three months of data are available. For those performance measurements on which CGEY does not have three months of historical data, Staff determined

that CGEY, as the independent test administrator, should exercise its discretion to determine "whether and how Functionality Testing may proceed, as long as there is some historical data and an analysis is made." Impasse Resolution at 7. AT&T insists that three months of historical data must be reviewed for each performance measurement and an interim Historical Data Evaluation report must be issued before the Functionality Test can begin. Motion for Review at 4.

AT&T's Motion for Review is based on two primary contentions: (1) Staff's construction of the MTP and TSD is flawed and (2) permitting the Functionality Test to begin before three months of data for every performance measurement is analyzed will compromise the reliability of the underlying data. Contrary to AT&T's contentions, Staff extensively and properly analyzed the MTP and the TSD, taking into consideration all of the provisions of those documents as well as the parties' intent. Further, CGEY's audit of Qwest's performance measurement data gathering processes has confirmed that Qwest is properly and reliably gathering the underlying data. Therefore, beginning the Functionality Test will not compromise the underlying data.

This proceeding has been substantially delayed for a variety of reasons. CGEY's confirmation that Qwest is properly capturing the underlying performance measurement data minimizes the risk in beginning the Functionality Test; any remaining risk is eliminated by the availability of re-testing. There is now no valid reason to delay the beginning of the Functionality Test. Accordingly, Qwest respectfully requests that the ALJ deny AT&T's Motion for Review, uphold Staff's decision on the impasse issue, and allow the Functionality Test to move forward.

II. BACKGROUND

The Master Plan for Testing U S WEST's Operations Support Systems in Arizona, version 4.0, dated April 6, 2000 (the "Master Test Plan" or "MTP"), represents extensive collaboration between the Arizona Corporation Commission ("ACC"), its consultants, Qwest, the Competitive Local Exchange Carrier ("CLEC") participants in the Test Advisory Group ("TAG"), and CGEY. The parties invested substantial resources and effort, including many hours in face to face meetings, in order to reach agreement regarding the design of a test to evaluate the access Qwest provides the CLECs to Qwest's OSS. The MTP represents the parties' negotiated compromise on hundreds of issues. Staff decided the handful of issues on which the parties could not reach agreement after considering the parties' positions.

The MTP sets forth the roadmap for the test of Qwest's OSS, including a Functionality Test, Retail Parity Evaluation, Capacity Test, Relationship Management Evaluation, and Performance Measurement Evaluation ("PME"). Exhibit B of the MTP sets forth the Service Performance Indicator Definitions ("PIDs") that are used to measure the performance of Qwest's OSS. The detailed test procedures and criteria, including entrance and exit standards for each test, are set forth the 271 Test Standards Document, version 2.7, dated June 24, 2000 (the "TSD"). The TSD contains the details for the OSS tests, and, as AT&T acknowledged, is intended to be consistent with the MTP. *See* Motion for Review at 4n.8.

The issue currently before the Commission relates to two of the tests described in the MTP and detailed in the TSD: the Functionality Test and the PME. The Functionality Test includes a test of Qwest's pre-ordering, ordering, provisioning, maintenance and repair, and billing processes. The PME includes a review of Qwest's performance measurement data collection and calculation processes, an evaluation of three months of historical data, and an

evaluation of performance measurement data collected during the Functionality and Capacity Tests. In May 2000, CGEY distributed a Performance Measurement Process Audit Plan indicating that the Functionality Test could begin after one month of historical data for the PIDs was analyzed. In the subsequent TAG discussions regarding what portion of the PME must be complete before the Functionality Test can begin, it became clear that AT&T disagreed with CGEY's recommendation to begin the Functionality Test after analyzing one month of data for the performance measurements. The issue was declared an impasse and was submitted to Staff for resolution.

The two segments of the PME that are at issue here are the PM Process Review and the Historical Data Evaluation. The PM Process Review is designed to evaluate Qwest's processes and procedures for collecting the data to be used in calculating the performance measurements. MTP § 8.3.1. In the Historical Data Evaluation, CGEY analyzes Qwest's data to determine whether Qwest is correctly computing performance measurement results. MTP § 8.3.2. In other words, the PM Process Review determines whether Qwest is accurately collecting the proper data and the Historical Data Evaluation determines whether Qwest is accurately calculating the performance measurements based on the underlying data.

Just before Staff distributed its Impasse Resolution of the impasse issue, CGEY distributed its Qwest Performance Measures Interim Report ("Interim Report"). In a TAG meeting held to discuss the Interim Report, CGEY indicated that it has completed the PM Process Review and determined that Qwest is properly capturing the underlying data. In addition, CGEY stated that it has received three months of historical data for almost all of the performance measurements. CGEY now recommends that Functionality Testing begin for pre-order and order transactions.

III. ARGUMENT

A. AT&T's Concern that the Functionality Test may begin "without the Review and Audit of *Any* Historical Data" is Moot because CGEY has Three Months of Data for the Vast Majority of Performance Measurements.

AT&T requests review of Staff's Impasse Resolution because, according to AT&T, "Staff's resolution allows the Functionality Test to commence without the review and audit of *any* historical data." Motion for Review at 3 (emphasis in original). This concern is moot, however, because Qwest has provided CGEY with three months of historical data for the vast majority of the performance measurements. Because CGEY already has three months of data for most of the performance measurements, there is no risk that the Functionality Test will begin without any historical data. The only issue that remains is whether the beginning of the Functionality Test must be delayed until CGEY has reviewed, analyzed, and written a report regarding three months of data for 100% of the performance measurements.

B. Staff Properly Analyzed the Impasse Issue and Reached the Right Result.

1. Staff Determined that a Final Report is not Required before Functionality Testing Begins because AT&T Raised that Issue.

AT&T contends that Staff "answer[ed] the wrong question" in its Impasse Resolution because Staff included the phrase "with a Final Report issued" in its description of the issue. Motion for Review at 3. AT&T misses the mark, however, because Staff only addressed this issue because AT&T raised it.

Staff described the issue before it as "whether the Performance Measurement Evaluation, which includes a Historical Data Evaluation of three months of Qwest's performance measurement data, must be finished and passed, *with a Final Report issued*, before Functionality Testing may begin." Impasse Resolution at 1. AT&T had emphasized the requirement for a final written report as an exit criterion for the PME in a letter to Staff. *See* August 10, 2000 letter

from Richard S. Wolters, AT&T, to Maureen Scott, ACC, attached as Exhibit B to Motion for Review. In that letter, AT&T italicized the following quote from MTP § 8.6: "*Exit criteria will include a final report that performance measurement collection, analysis and reporting processes as reviewed by CGT are fully compliant with the performance measurements contained in the PID.*") Exhibit B to Motion to Review, at 3. Thus, Staff appropriately addressed this issue before it proceeded with the remaining issue.

2. Staff Correctly Construed the MTP and TSD Provisions to Prevent Additional Needless Delay in Beginning the Functionality Test.

AT&T claims that Staff's analysis is flawed because it ignores TSD language that conflicts with its Impasse Resolution, standard concepts of contract construction, and the parties' intent. AT&T is mistaken on all three counts.

First, Staff did not ignore language in the TSD that conflicts with its Impasse Resolution. Indeed, Staff explicitly noted that Section 3.7.4.3(c)5 contains conflicting language. Impasse Resolution at 6. Rather than ignore that language, Staff addressed it and attempted to reach reasonable resolution of the impasse issue. In its analysis, Staff considered all of the MTP and TSD provisions that relate to the scope of the PME and the entrance criteria for the Functionality Test. These provisions were the subject of much discussion and negotiation in many hours of TAG meetings and, as it attempted to reach agreement on various provisions, the TAG was not always strictly consistent in the compromise language. Nevertheless, Staff thoroughly considered the provisions and the parties' intent and arrived at a reasonable construction.

Further, Staff's analysis is consistent with standard concepts of contract construction. AT&T claims that the conflicting language in the TSD creates an ambiguity and that Staff should then ignore the conflicting provision and look beyond the four corners of the documents to determine the parties' intent. AT&T misses the mark. The standard rules of contract

construction require that contradictory provisions of the documents be harmonized based on the parties' intent as reflected in the documents themselves, if possible, before the decision-maker looks to evidence outside of the documents. That is precisely what Staff did. Staff's analysis is squarely based upon, and supported by, a harmonious construction of the provisions of the MTP and the TSD.

Finally, Staff did not ignore the parties' intent. Indeed, Staff specifically stated that, "[w]hen the express language was ambiguous, we attempted to determine the parties' intent and interpret the ambiguity in the most reasonable fashion possible taking into account the parties' respective positions and the overall integrity of the test." Impasse Resolution at 8. AT&T's concern appears to be that Staff's decision was not controlled solely by AT&T's intent and AT&T's interpretation of Qwest's intent regarding the MTP provisions that require only that the PME is "sufficiently completed" before Functionality Testing begins. *See* MTP § 4.7.3.2. AT&T claims that the word "sufficiently" was added to address Qwest's concern that the beginning of Functionality Testing should not be delayed because some of the PIDs that were under development had not been audited. AT&T construes Qwest's intent too narrowly. While the development of PIDs was an issue and a prime example, it was Qwest's intent that the beginning of Functionality Testing not be unreasonably delayed under any circumstance. Staff's Impasse Resolution is consistent with that intent.

C. Beginning Functionality Testing at this Point Presents No Risk to the Integrity or Validity of the Test Results.

The issue before the ALJ is whether the both PM Process Review and the Historical Data Evaluation must be complete before the Functionality Test can begin. Staff determined that the PM Process Review must be complete and most of the Historical Data Evaluation must be

completed before the Functionality Test can begin. AT&T claims that both evaluations must be completed in order to ensure "the reliability of underlying data." Motion for Review at 14.

Contrary to AT&T's contention, the reliability of the underlying data is dependent only upon Qwest's collection processes. The Historical Data Evaluation only determines whether Qwest plugs that information into the right formulas to calculate the performance measurements. Thus, the reliability of the underlying data is dependent on the PM Process Review, rather than the Historical Data Evaluation. Even if issues arise during the Historical Data Evaluation regarding how Qwest calculates the performance measurements, so long as the underlying data is correctly collected, those issues have no impact on the reliability of the underlying data. Therefore, the Functionality Test can begin without compromising the reliability of the data so long as the PM Process Review is completed.

AT&T claims that the Historical Data Evaluation will verify the reliability of the underlying data. If the underlying data is accurately collected, however, such a verification through the Historical Data Evaluation is simply redundant -- it will add nothing to CGEY's evaluation and will needlessly delay the test. Nonetheless, Staff did not decide that Functionality Testing could begin after only the PM Process Review is complete. Instead, in order to address AT&T's overly conservative concerns, Staff determined that, in addition to completion of the PM Process Review, at least one month of data for each PID had to be analyzed in the Historical Data Evaluation before Functionality Testing can begin. Staff's resolution thus strikes a reasonable balance between AT&T's concerns and avoiding further unreasonable delays in this testing process. Moreover, as noted above, CGEY has in fact received three months of data for the vast majority of performance measurements. Thus, there is no valid argument that Functionality Testing may begin without any historical data analysis.

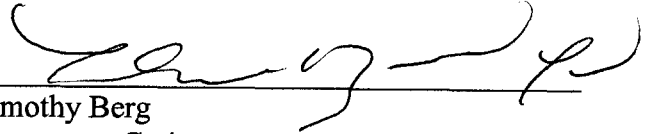
Finally, re-testing can be required for any part of the Functionality Test if necessitated by subsequent Historical Data Evaluation results. Thus, any remaining risk to the reliability of the test results is eliminated.

IV. CONCLUSION

In its Impasse Resolution, Staff carefully and thoroughly considered the relevant provisions of the MTP and TSD and all of the parties' intent in agreeing to those provisions. Staff arrived at a decision that more than adequately addresses AT&T's data reliability concerns while permitting the Functionality Test to begin without risk and without unreasonable and unnecessary delay. Qwest respectfully requests that the Commission deny AT&T's Motion for Review, affirm Staff's Impasse Resolution, and allow this test to proceed without any further delay.

DATED this 8th day of November, 2000.

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE WITH R14-3-107(C) OF THE
ACC'S RULES OF PRACTICE AND PROCEDURE**

I hereby certify that I have this day served the foregoing documents on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

**ORIGINAL and 10 copies of the
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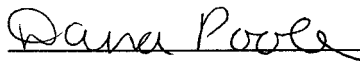
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